

PT 02-28

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

VERMILION COUNTY MUSEUM SOCIETY)

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

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Docket #

99-92-30

A.H. Docket #

00-PT-0009

P. I. #

23-08-105-048-0040

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Everett L. Laury of Kesler, Laury, Brougher & Lietz for Vermilion County Museum Society; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on December 17, 2001, to determine whether Vermilion County Parcel Index No. 23-08-105-048-0040 qualified for exemption during the 1999 assessment year. Susan Richter, curator of the Vermilion County Museum Society, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issue in this matter is whether the applicant was in the process of adapting the subject property or in fact used the real property at issue for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the exemption be granted for a portion of the 1999 assessment year. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Vermilion County Parcel Index No. 23-08-105-048-0040 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

2. On October 26, 1999, the Department received the request for exemption of Vermilion County Parcel Index No. 23-08-105-048-0040. On February 3, 2000, the Department denied the requested exemption finding that the property was not in exempt use. On February 10, 2000, applicant timely protested the denial and requested a hearing. The hearing held on December 17, 2001, was pursuant to that request. (Dept. Ex. No. 1)

3. Applicant acquired the subject parcel by a warranty deed dated August 26, 1998. The property is contiguous with applicant's current properties. (Dept. Ex. No. 1; Applicant's Ex. No. 1)

4. The purchase of the subject property enables the applicant to proceed with its anticipated expansion. Applicant operates the Fithian Home, which is a Lincoln site on the list of national historic sites. The Fithian Home is located on land connected to the subject property that is also owned by the applicant. Dr. Fithian was a friend of Abraham Lincoln who frequented the site. (Applicant's Ex. No. 1; Tr. pp. 17-20)

5. Applicant intends the new building on the subject property to be modeled after the original 1830's Vermilion County Courthouse in which Abraham Lincoln practiced law. Architects incorporated elements related to Vermilion County in the design. (Applicant's Ex. Nos. 2, 10; Tr. pp. 27-29)

6. Applicant's mission is to disseminate the county history to the public through projects, programs, and exhibits. Applicant's purpose is to establish, maintain and operate a museum and preserve the historical heritage of Vermilion County, Illinois, including natural history. The applicant has a registered school program for students in Vermilion County. (Dept. Ex. No. 1; Tr. p. 29)

7. Applicant needs increased space for exhibits, archival storage, and areas for “hands on” programs. Children’s classes will be held at the new museum. (Tr. pp. 29-30)

8. The new building will contain areas for archival storage, workrooms, a gift shop, galleries, an atrium, gallery viewing areas, and office space. (Applicant’s Ex. No. 13; Tr. pp. 30-33)

9. The applicant has between 2,000 and 3,000 visitors from outside the county each year. The new building will be the Museum Visitor’s Center and the Fithian Home will become a total house museum with all rooms reflecting the history of the house. (Tr. p. 34)

10. Applicant began discussions about expansion of its museum facilities in 1997. In 1997 an architect agreed to draw plans for the new museum building. (Applicant’s Ex. Nos. 3-4; Tr. pp. 21-22)

11. The architect submitted the initial plans for the proposed building on the subject real property in early 1999. (Applicant’s Ex. No. 13; Tr. pp. 31-33)

12. In 1998, applicant’s board started a fund raising drive for the proposed new museum with the minimum goal of one million dollars (\$1,000,000.00). The drive, begun on August 15, 1998, was completed on August 1, 1999, with the goal reached. (Applicant’s Ex. Nos. 3, 5-7; Tr. pp. 22-23, 39)

13. In early 1999 soil samples were taken on the property to ensure the site would support the weight of the new building. Applicant received the invoice for the sampling on March 31, 1999, and paid the bill on April 9, 1999. (Applicant’s Ex. No. 12; Tr. pp. 38-39)

14. There was a house on the real property at issue when applicant acquired it. The prior owners of the property vacated the house in January 1999. Railroad workers built the house in the late 1800’s and the interior of the house was painted in the style of that time. Applicant offered to give the house away and on August 18, 2000, at 10:00 a.m., the house was moved. During 1999, applicant gave tours of the house. (Dept. Ex. No. 1; Applicant’s Ex. No. 11; Tr. pp. 35-37)

15. Bids were taken for the construction of the building on the subject property on June 1, 2000. Ground breaking for the new museum took place at 11:00 a.m. on August 18, 2000. Construction work began within seven days of the ground breaking and the building was 85% complete on the day of the hearing. (Applicant's Ex. Nos. 15, 16; Tr. pp. 38-40)

16. The applicant intends to have the opening ceremony for the building in April 2002. (Tr. 41)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 ILCS 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: . . .

(f) Historical societies¹

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever

¹ P.A. 91-416 §5 effective August 6, 1999, removed the requirement that all taxing districts within which the historical society is situated must adopt a resolution finding the society is a charitable organization. This was not addressed at the hearing.

doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

The organization:

1. must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
2. must have no capital, capital stock, or shareholders and earn no profits or dividends;
3. must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
4. must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,

5. must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
6. the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization using property for charitable purposes. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

I take administrative notice that in Vermilion County Museum Soc. v. Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995) the appellate court found that under the criteria set forth in Methodist Old Peoples Home, the applicant’s parking lot qualified for exemption as owned by a charitable organization and used for charitable purposes. Therefore, the only question before me is whether there was sufficient adaptation on the real property at issue to qualify for exemption in 1999.

In 1997, applicant began discussions about its planned expansion. The expansion was necessary because of insufficient space in applicant’s current facility for its programs and storage. An architect began drawings of the building to be erected on the property at issue.

In 1998, applicant purchased the subject property and the fund raising drive to collect at least one million dollars for the museum expansion was started. By mid-1999 the applicant had collected the required amount.

The prior owners of the subject property moved out of the house in January 1999. Soil borings were taken in early 1999 and applicant received the bill for the work on March 31, 1999. Architectural plans were submitted in 1999. The applicant offered tours of the house on the subject property until it could be removed in 2000.

Immediately upon removal of the house, ground breaking for the museum took place and within seven days construction began. At the time of the hearing, the building was 85% completed and the applicant intends to open the museum this month.

In the case of Weslin Properties, Inc. v. Dep't of Revenue, 157 Ill.App.3d 580 (2nd Dist, 1987) the Appellate Court held that a portion of property which was under development and adaptation for exempt use, qualified for exemption. In that case, Weslin Properties purchased a 24.3-acre tract on May 26, 1983, to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, Weslin Properties approved a site plan and hired an architect. Physical adaptation began with the construction of berms. In 1984 building of the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of the real estate did not qualify, as there had not been sufficient adaptation and development for use of the remainder of the property during 1983. The facts in Weslin are closely aligned with the facts before me.

The applicant herein has asked for a property tax exemption for the 1999 assessment year. The applicant purchased the property in 1998. The prior owners remained in the house until some time in January 1999. Soil borings were taken sometime in early 1999, and the bill for the work, dated March 31, 1999, was paid in April. The necessary money was raised for the construction of the new museum and architectural plans were completed in 1999. As March 31, 1999, is the only definite date given showing adaptation for exempt use on the subject property after January 1999, when the prior owners vacated the house, I find that the applicant has shown sufficient adaptation occurred on the property from March 31, 1999 through December 1999 to qualify the real property for exemption.

Illinois Courts have similarly held that property is exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of

County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Dep't of Revenue, *supra*.

It is therefore recommended that Vermilion County Parcel Index No. 23-08-105-048-0040 be exempt from property taxation for the period of March 31, 1999 through December 31, 1999, or for 76% of the 1999 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: April 17, 2002